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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/936,755	09/17/2001	Taro Takahashi	225-01	8898

7590 03/09/2004
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EXAMINER

PRATT, HELEN F

ART UNIT PAPER NUMBER

1761

DATE MAILED: 03/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary

Application No.

09/936,755

Applicant(s)

TAKAHASHI ET AL.

Examiner

Helen F. Pratt

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 26 January 2004.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1 and 3-7 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) 6 is/are allowed.
- 6) Claim(s) 1, 3, 5 and 7 is/are rejected.
- 7) Claim(s) 4 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 - Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 - Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 - 1. Certified copies of the priority documents have been received.
 - 2. Certified copies of the priority documents have been received in Application No. _____.
 - 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 - Paper No(s)/Mail Date _____.
- 4) Interview Summary (PTO-413)
 - Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Akahoshi et al. (5,690,975).

Akahoshi et al. disclose a composition and method of making a fermented milk containing blockwise-type HM pectin in which HM pectin at within the claimed amount (3.5 g.) is combined with condensed strawberry juice and water and pasteurized at 100 C. for 15 minutes, then calcium gluconate is added and the pectin containing syrup is added to make a yogurt drink (col. 11, lines 5-20). Claims 1, 3 and 5 differ from the reference in the limitation that the pectin is low-molecularized to a degree such that the viscosity of a 5% solution at 25 C is no greater than 150 mPa.s. However, the above mixture is considered to contain low-molecularized pectin (LMP) because a mixture containing high methoxy pectin is combined with condensed strawberry juice and water and pasteurized at 100 C. for 15 minutes. Since this is one of the methods used as disclosed on page 4, lines 23-36 of the specification to make a LMP, the pectin as disclosed by Akahoshi is considered to make a LMP absent a showing to the contrary. Therefore, it would have been obvious to make a low molecularized pectin as shown by the method of Akahoshi et al.

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Claim 7 further requires a stabilizer for an acidic protein food as discussed above. Akahoshi et al. disclose such a product because it has been made according to the claimed process as discussed above and is used in an acidic protein food, which is yoghurt (page 4, lines 25-35). It is noted that the pectin is treated for 10 minutes in table 3, page 11, whereas Akahoshi et al. treats for 15 minutes at 100 C, which could further reduce the viscosity of the pectin, absent a showing to the contrary that it would not. At any rate, nothing unobvious is seen in choosing a particular Mpa such as under 150, when applicants' specification states that low-molecularized pectins heated at 100 C (preferably) and above are acceptable. Therefore, it would have been obvious to use the process disclosed by Akahoshi et al. to make the claimed product.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mitchell et al. (5,498,702).

Mitchell et al. disclose that it is known to treat pectin to make low-molecularized pectins which are used in soft drinks which are generally acidic, i. e. PEPSI and COKE (Trademarks) (col. 9, lines 1-40, col. 12, lines 50-63) and in a gelatin desert (col. 13, lines 30-50). Gelatin is of course made of protein. Mitchell et al. disclose a product with a viscosity of no greater than 150 mPa's, by treating pectin at 120 C for an hour (col. 9, lines 19-25) which according to applicants chart on page 11 would make a viscosity of less than 150 mpa's. No weight is given to the intended use "for an acidic protein food". Claim 7 differs from the reference in whether the pectin provides a stabilizing effect. However, as pectins and other polysaccharides absorb water and make gels they are generally known to give a stabilizing effect as in their use in jams

and jellies. Nothing is seen at this time that the pectin of the reference does not also provide a stabilizing effect. Therefore, it would have been obvious to make a composition as disclosed by Mitchell et al. which provides a stabilizing effect.

Allowable Subject Matter

Claim 4 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 6 is allowed.

ARGUMENTS

Applicant's arguments filed 1-26-04 have been fully considered but they are not persuasive. Applicants argue that Akahoshi et al. disclose that pectin is added at 0.35% which is lower than 0.4% as in the claims. However, no patentable distinction is seen in 0.35 and 0.4 which is only .05% difference absent a showing of unexpected results using the higher amount. Applicants argue that Mitchel et al. does not disclose that the low-molecularized pectin is a stabilizer as in claim 5. However, a new rejection has been made for claim 5.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within

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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen F. Pratt whose telephone number is 703-308-1978. The examiner can normally be reached on Monday to Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Milton Cano, can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

HP 3-1-04


HELEN PRATT
PRIMARY EXAMINER